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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/568,473 | 02/15/2006 | Michiel Errit Roersma | NL031009 | 2553 |

24737 7590 01/09/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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| EXAMINER | |
|---|---|
| JOHNSON III, HENRY M | |
| ART UNIT | PAPER NUMBER |
| 3769 | |
| MAIL DATE | DELIVERY MODE |
| 01/09/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/568,473 | ROERSMA ET AL. | |
| | Examiner | Art Unit | |
| | HENRY M. JOHNSON III | 3769 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *10 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2 and 4-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 4-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 February 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

### *Response to Arguments*

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection necessitated by Applicant's amendment.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4-8 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0034319 to Anderson et al. in view of U.S. Patent Application Publication US 2003/0065314 to Altshuler et al. Anderson et al. teach a method and apparatus for hair growth management by applying low energy optical radiation to a treatment area of a patient's skin (abstract). A lamp apparatus with wavelengths between 600 and 1200 nanometers is disclosed using pulse durations of 10 milliseconds and a fluence of from 0.27 to 9.9 J/cm$^2$ (Table 2). The range in fluences is disclosed as varying due to the color of the hair, thus teaching that hair properties influence the power selected by the control box

(Fig. 5, # 24) during operation. The control box must be capable of setting the maximum fluence and the pulse durations to those in the tables. Anderson et al. does not teach a control means that selects the treatment values based on skin types. Altshuler et al. discloses a system for treating tissue with electromagnetic radiation that may be used for the removal of unwanted hair (paragraph 0003) that provides an indication of skin type for the patient, which indication can be used to control the radiation applied (paragraph 0058). The influence of skin type as a factor in optical hair removal is well known in the art as further substantiated by Laser hair removal, Richard J. Ort, Christine Dierickx; Seminars in Cutaneous Medicine and Surgery, Volume 21, Issue 2, June 2002, Pages 129-144, Optical hair removal, Richard J. Ort, R. Rox Anderson; Seminars in Cutaneous Medicine and Surgery, Volume 18, Issue 2, June 1999, Pages 149-158 and Methods of hair removal, Elise A. Olsen; Journal of the American Academy of Dermatology, Volume 40, Issue 2, February 1999, Pages 143-155. Therefore, it would have been obvious to one skilled in the art to use the control means using skin types as taught by Altshuler et al. in the invention of Anderson et al. to provide the proper radiation levels during hair removal.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0034319 to Anderson et al. in view of U.S. Patent Application Publication US 2003/0065314 to Altshuler et al. as applied to claims 1 and 5 above, and further in view of U.S. Patent Application Publication US 2003/0032950 to Altshuler et al. Anderson et al. and Altshuler et al. '5314 are discussed above, but do not teach the use of a flashlamp or a means for measuring velocity. Altshuler et al. '2950 discloses a device for irradiating tissue that may use a flashlamp (paragraph 0074) and further teaches a motion sensor (Fig. 18A, #1820) may be used to prevent injury to skin by providing feedback control to a treatment source (e.g., source 510 in FIG. 2), such that if the handpiece remains motionless

or if the movement across the skin 1810 is too slow or too fast, the intensity of source may be decreased or increased, respectively, or the source may be turned off (paragraph 0152). It would have been obvious to one skilled in the art to use the well known flashlamp as an alternative radiation source and to incorporate a motion sensor as taught by Altshuler et al. '2950 in the invention of Anderson et al. in view of Altshuler et al. '5314 to control the fluence delivered based on the speed of the handpiece and skin type as suggested by the two Altshuler et al. publications to reduce potential skin damage.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to HENRY M. JOHNSON III at telephone number (571)272-4768.

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769